

**DECISION**



19419 *mc ANN*  
*PLM 1*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-198120

**DATE:** September 18, 1981

**MATTER OF:** Forest C. McKown - Claim for backpay  
for detail

- DIGEST:** (1) Civilian employed by Department of the Army as Training Instructor (Munitions), GS-11, claims retroactive temporary promotion and backpay for alleged detail to and performance of higher-level duties of Training Instructor (Munitions), GS-12. Letter from former supervisor demonstrates his acquiescence in and employee's performance of higher-level duties for initial period of claim, so as to constitute a detail. Employee is entitled to relief under Turner-Caldwell line of decisions for that period.
- (2) For subsequent period, agency's administrative record and employee's statement contain irreconcilable disputes of fact. Where such written statements so conflict, this Office has no alternative but to accept agency's statement of facts. Since claim is doubtful due to lack of suitable evidence we must deny claim for subsequent period.

This decision is in response to an appeal by Mr. Forest C. McKown from our Claims Group action of January 14, 1980, Settlement Certificate No. Z-2819311, which denied his claim for a retroactive temporary promotion and backpay.

Mr. McKown alleges that while serving in the position of Training Instructor (Munitions), GS-1712-11, with the Department of the Army he was detailed to the higher-grade position of Training Instructor (Munitions), GS-1712-12, for the period from July 2, 1972, to November 3, 1977, without prior Civil Service Commission approval. Thus, under our decision in Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed 56 Comp. Gen. 427 (1977), he claims

~~018062~~

116357

entitlement to a retroactive temporary promotion and backpay from the 121st day after July 2, 1972, until November 3, 1977. The rather voluminous record in this case reveals the following.

On November 8, 1977, Mr. McKown filed a classification complaint which alleged that his present position should have been classified since July 1972, as a GS-1712-12 Training Instructor (Munitions). The classification complaint decision dated February 22, 1978, found that Mr. McKown's position at that time was correctly classified. It noted that the essential differences between the GS-12 position and the GS-11 position of Training Instructor (Munitions) is that the former has a more theoretical orientation and is concerned with such subjects as management planning, space technology applications, and the discretionary selection of topics to be taught. The latter, however, has a more practical orientation and is more concerned with the teaching of both practical equipment skills (operation, maintenance, repair, etc.); and topics which have been selected by higher authority.

On March 29, 1978, Mr. McKown filed his backpay claim with the Department of the Army. In order to protect the claimant against the expiration of the 6-year period for filing claims with the General Accounting Office (31 U.S.C. § 71a), the Army forwarded the claim to this Office. It was received on June 16, 1978, by our Claims Group and returned to the Army for handling. Thus, the claim was timely filed, and is not subject to 31 U.S.C. § 71a (1976).

As part of the evaluation process, Mr. McKown submitted letters from a former supervisor, a person who was occasionally his acting supervisor, and fellow employees. The letters generally attest to his performance of GS-12 duties. His supervisor submitted his appraisal, dated July 5, 1978, of the duties assigned to Mr. McKown. In essence, the supervisor denied, for the most part, that the duties were at a GS-12 level of competence, but he did admit that he assigned Mr. McKown GS-12 duties for brief periods in July/August 1977, and in the fourth quarter of 1977. On August 17, 1978, the Civilian Personnel Officer denied his claim on the grounds that there was no evidence of a detail to a higher-grade position. This backpay decision did not address, however, the question of whether Mr. McKown actually performed at a GS-12 level.

By letter of December 13, 1978, Mr. McKown appealed through proper departmental channels to our Claims Group. In his submission, supplemented by some 32 exhibits, he has attempted to present a detailed rebuttal to his supervisor's statements and has supplied other documentation such as lesson plans and memoranda which, he claims, supports his position. On January 14, 1980, our Claims Group action denied Mr. McKown's claim on the ground that there was insufficient evidence of a detail to a particular position classified at a higher grade. Nevertheless, it found that the evidence Mr. McKown provided demonstrated that he performed duties at the GS-12 level. Subsequently, Mr. McKown filed an appeal of our Claims Group's action.

At the outset of our evaluation of this case, we note that there are innumerable instances in the Government service where employees of a lower classification perform duties of a higher classification, but as a general rule an employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties he performs. When an employee performs duties normally reserved to employees in a grade level higher than the one he holds, he is not entitled to the salary of the higher-grade level until such time as he is promoted to that grade. Dianish v. United States, 183 Ct. Cl. 702 (1968); 55 Comp. Gen. 515 (1975). Furthermore, the Back Pay Act, 5 U.S.C. § 5596 (1976) and its implementing regulations do not authorize a retroactive promotion with backpay for the period of an alleged improper classification. United States v. Testan, 424 U.S. 392 (1976). Hence, Mr. McKown may not gain entitlement to a retroactive promotion on the basis of any claim that he was misclassified, or merely performed duties normally reserved to employees in a higher-grade classification.

In regard to Mr. McKown's claim to a retroactive temporary promotion and backpay under our Turner-Caldwell line of decisions, we will divide it into two periods: (1) from July 2, 1972, to December 31, 1972, and (2) from January 1, 1973, until November 3, 1977.

July 2, 1972 to December 31, 1972

Federal Personnel Manual (FPM) Bulletin No. 300-40, May 25, 1977, was issued by the Civil Service Commission in order to provide additional information to assist agencies in the proper application of our Turner-Caldwell decisions. Paragraph 4 of the FPM Bulletin defines a detail as the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to his regular duties at the end of the detail. Paragraph 8F of the FPM Bulletin requires agencies, in accordance with FPM Supplement 296-31, Book II, subchapter S3-13, to record details in excess of 30 calendar days on a Standard Form 52, or other appropriate form, and to file it on the permanent side of the employee's Official Personnel Folder. However, in the absence of this form of documentation, paragraph 8F recognizes that the employee may provide other forms of acceptable proof of his detail. Such acceptable documentation includes official personnel documents or official memoranda of assignment, a decision under established grievance procedures, or a written statement from the person who supervised the employee during the period in question, or other management official familiar with the work, certifying that to his or her personal knowledge the employee performed the duties of the particular established, classified position for the period claimed.

As indicated above, although the assignment of an employee to a particular higher-grade position need not be formally documented, there must be official recognition of his assignment to and performance of the higher-grade duties. While statements of co-workers as to the nature of the employees' duties may be corroborative evidence of a detail, such evidence alone is insufficient to document a detail. William L. DeGraw, B-194369, August 24, 1979. On the other hand, official recognition may be established by the statements of the employee's supervisors or other management officials indicating that to their knowledge he performed the duties of the higher-grade position. Acquiescence in his performance of those duties, or inducement by those officials will ordinarily suffice to demonstrate that he was informally detailed. Dale W. Weaver, B-198759, February 10, 1981; William A. Belvin, B-195557, January 8, 1980.

In this case a letter from Mr. McKown's former supervisor indicates that his assigned tasks were at a GS-12 level of competence on five different weapons systems. These tasks constituted all of his duties during the first period of his claim. Corroborating letters have been submitted from an acting temporary supervisor and co-workers and there is no question that several GS-12 Training Instructor (Munitions) positions were established and classified. Although none may have been vacant, this factor will not preclude a Turner-Caldwell type claim. 57 Comp. Gen. 767 (1978). Finally, in order to succeed, Mr. McKown must also establish that he actually performed the full range of duties of the higher-grade position. In this case, the letter from the former supervisor conveniently and clearly establishes both the fact of an informal detail and actual performance of the full range of duties of the higher-grade position.

Accordingly, Mr. McKown is entitled to a retroactive temporary promotion with backpay to the GS-12 position from the 121st day after July 2, 1972, until December 31, 1972.

January 1, 1973 to November 3, 1977

As to the second period, we note that it is undisputed in the record that GS-12 Training Instructor positions were already established and classified prior to this period, and that the position to which Mr. McKown claims he was detailed was described originally by job description 14750 dated February 4, 1972. The Department of the Army's backpay decision, however, found that there simply was no detail, whether one would characterize it as official or unofficial, formal or informal. Additionally, the administrative record contains an analysis of Mr. McKown's work by his supervisor during this period, which specifically denies that he performed any GS-12 duties on the weapons systems assigned to him except for two brief periods (which in themselves would not be in excess of 120 days).

As previously stated, Mr. McKown has prepared and presented a voluminous record in an attempt to rebut his supervisor's statement of the facts. Therefore, it is evident from the record that there are present many irreconcilable factual disputes between the supervisor's

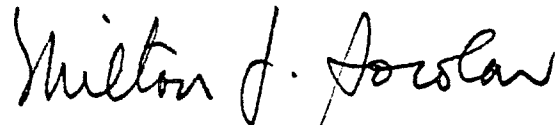
B-198120

administrative report and Mr. McKown's statement and attempt at rebuttal. This Office does not conduct adversary hearings, but makes its decision on the basis of the written record presented to us by the parties. 4 C.F.R. § 31.7 (1980). Where the record, as here, presents irreconcilable disputes of fact between a Government agency and an individual claimant, it is our long-standing practice to resolve such disputes in favor of the Government. George W. Lovill, B-196465, April 16, 1980; William C. Hughes, Jr., B-192831, April 17, 1979.

As a result the factual dispute on which Mr. McKown's appeal is based is of insufficient probative value to permit payment of the claim for the second period. Since the claim is of doubtful validity due to a lack of suitable evidence, we must deny the claim and leave the claimant to his remedy in the courts. Louis Osbourne, B-197980, May 9, 1980; Lawrence J. McCarren, B-181632, February 12, 1975.

\* \* \* \* \*

Therefore, Mr. McKown is entitled to a retroactive temporary promotion with backpay to the GS-12 position for the first period beginning 121 days after July 2, 1972, and ending on December 31, 1972. The disallowance of his claim by our Claims Group for the second period from January 1, 1973, until November 3, 1977, is sustained.



Acting Comptroller General  
of the United States